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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

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UNITED STATES OF AMERICA,

Plaintiff,

v.

ABRAHAM JOEL MORALES-VELEZ,

Defendant.

MEMORANDUM DECISION AND  
ORDER CONTINUING TRIAL  
AND EXCLUDING TIME  
UNDER THE SPEEDY TRIAL ACT

Case No. 1:21-CR-82 TS

District Judge Ted Stewart

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This Order Continuing Trial and Excluding Time Under the Speedy Trial Act is entered in response to the outbreak of the Coronavirus Disease (“COVID-19”) in the District of Utah.

On March 13, 2020, a [National Emergency was declared](#) in response to the nationwide outbreak, which the [World Health Organization](#) has [declared a global pandemic](#). The total numbers of confirmed COVID-19 cases and deaths within the United States continue to rise and the nationwide emergency designation adopted by the President of the United States in 2020 remains in place. Utah and the nation remain in the midst of the most serious global pandemic in over a century.

The Centers for Disease Control and Prevention (“CDC”) has issued guidance concerning recommended activities based on a three-tier community risk assessment. The approach involves assessing county-level data and designating individual counties as Low (Green), Medium (Orange), or High (Red). Salt Lake County is currently in a “red” stage. Currently, Salt Lake County is designated as “Red,” necessitating the Court to take significant precautions.

Chief Judge Robert J. Shelby has issued numerous General Court Orders in response to the outbreak of COVID-19 in the District of Utah.

- [General Order 20-008](#) placed restrictions on visitors to the District’s courthouse effective March 12, 2020, until further order.
- [General Order 20-009](#) postponed most civil and criminal proceedings, and included findings and conclusions for an “ends of justice” exclusion of time under the Speedy Trial Act<sup>1</sup> for all criminal cases in the District from March 16, 2020, through May 1, 2020.
- [General Order 20-010](#) modified court operations for some criminal proceedings and offender supervision effective March 23, 2020, until further order.
- [General Order 20-011](#) expanded video and teleconferencing capabilities for many criminal proceedings under the Coronavirus Aid, Relief, and Economic Security Act effective March 31, 2020, and continuing for 90 days.
- [General Order 20-012](#) extended the postponement of most civil and criminal proceedings to June 15, 2020, and included findings and conclusions for an “ends of justice” exclusion of time under the Speedy Trial Act<sup>2</sup> for all criminal cases through June 15, 2020.
- [General Order 20-017](#) extended the postponement of most civil and criminal proceedings to August 1, 2020, and included findings and conclusions for an “ends of justice” exclusion of time under the Speedy Trial Act<sup>3</sup> for all criminal cases through August 1, 2020.
- [General Order 20-021](#) extended the postponement of most civil and criminal proceedings to September 1, 2020, and included findings and conclusions for an “ends of justice” exclusion of time under the Speedy Trial Act<sup>4</sup> for all criminal cases through September 1, 2020.
- [General Order 20-026](#) extended the postponement of civil and criminal trials to October 1, 2020, and included findings and conclusions for an “ends of justice” exclusion of time under the Speedy Trial Act<sup>5</sup> for all criminal cases through October 1, 2020.
- [General Order 20-029](#) extended the postponement of civil and criminal trials to November 2, 2020, and included findings and conclusions for an “ends of justice”

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<sup>1</sup> 18 U.S.C. § 3161(h)(7)(A).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

exclusion of time under the Speedy Trial Act<sup>6</sup> for all criminal cases through November 2, 2020.

- [General Order 20-030](#) extended the postponement of civil and criminal trials to February 1, 2021, and included findings and conclusions for an “ends of justice” exclusion of time under the Speedy Trial Act<sup>7</sup> for all criminal cases through February 1, 2021.
- [General Order 21-001](#) extended the postponement of civil and criminal trials to April 1, 2021, and included findings and conclusions for an “ends of justice” exclusion of time under the Speedy Trial Act<sup>8</sup> for all criminal cases through April 1, 2021.
- [General Order 21-003](#) extended the postponement of civil and criminal trials to June 30, 2021, and included findings and conclusions for an “ends of justice” exclusion of time under the Speedy Trial Act for all criminal cases through June 30, 2021.
- [General Order 21-007](#) extended the postponement of civil and criminal trials to July 31, 2021, and included findings and conclusions for an “ends of justice” exclusion of time under the Speedy Trial Act for all criminal cases through July 31, 2021.
- [General Order 21-009](#) extended the postponement of civil and criminal trials to August 31, 2021, and included findings and conclusions for an “ends of justice” exclusion of time under the Speedy Trial Act for all criminal cases through August 31, 2021.
- [General Order 21-012](#) extended the postponement of civil and criminal trials to October 31, 2021, and included findings and conclusions for an “ends of justice” exclusion of time under the Speedy Trial Act for all criminal cases through October 31, 2021.
- [General Order 21-015](#) extended the postponement of civil and criminal trials to January 31, 2022, and included findings and conclusions for an “ends of justice” exclusion of time under the Speedy Trial Act for all criminal cases through January 31, 2022.
- [General Order 22-002](#) returned the court to Phase 1 of its reopening plan and vacated all trials scheduled prior to February 14, 2022. It also included findings and conclusions for an “ends of justice” exclusion of time under the Speedy Trial Act for all criminal cases through February 14, 2022.
- [General Order 22-004](#) returned the court to Phase 2 of its reopening plan allowing trials to resume. It also included findings and conclusions for an “ends of justice” exclusion of time under the Speedy Trial Act for all criminal cases through March 31, 2022.
- [General Order 22-006](#) rescinded the Court’s Plan for Phased Resumption of Operation and announced a new policy tethered to the CDC’s three-tier community risk model.

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

Despite improving conditions, General Order 22-006 included findings and conclusions for an “ends of justice” exclusion of time under the Speedy Trial Act for all criminal cases through June 30, 2022.

- [General Order 22-010](#) continued implementation of the Court’s policy tethered to the CDC’s three-tier community risk model. Despite improving conditions, General Order 22-010 included findings and conclusions for an “ends of justice” exclusion of time under the Speedy Trial Act for all criminal cases through August 31, 2022.

An “ends of justice” exclusion of time under the Speedy Trial Act is disfavored and “was meant to be a rarely used tool for those cases demanding more flexible treatment.”<sup>9</sup> However, based on the ongoing nature of the COVID-19 pandemic in the District, the effect of national and local public health recommendations, and the findings and conclusions in Chief Judge Shelby’s General Orders 20-009 through 20-012, 20-017, 20-021, 20-026, 20-029, 20-030, 21-001, 21-003, 21-007, 21-009, 21-012, 21-015, 22-002, 22-004, 22-006, and 22-010 it is necessary and appropriate to continue trial in this case and exclude time under the Speedy Trial Act. The ongoing spread of COVID-19 cases and deaths nationally, and in Utah, demand modifications in court practices to protect the public health. Courts and court operations are necessarily social operations, involving many people.

The need to protect the health of the public in the midst of a deadly pandemic outweighs the rights of Defendant and the public to a speedy trial. Moreover, there is a reduced ability to obtain an adequate spectrum of jurors and available counsel, witnesses, and court personnel to be present in the courtroom for trial. Long exposure in confined spaces, which is inherent in trial, increases risk of infection. Video and audio conferencing, used for hearings, are not available for trials. Counsel’s ability to adequately prepare for trial, including locating and consulting with

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<sup>9</sup> [United States v. Toombs](#), 574 F.3d 1262, 1269 (10th Cir. 2009).

witnesses, and defense counsel's ability to confer with Defendant, under these circumstances is also reduced.

A failure to continue trial under these circumstances would result in a miscarriage of justice<sup>10</sup> and would deny counsel for the government and Defendant the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.<sup>11</sup>

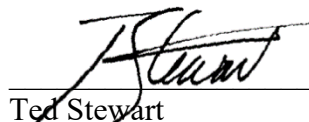
Therefore, the ends of justice served by such a continuance outweigh the best interests of the public and Defendant in a speedy trial.<sup>12</sup> This continuance is not predicated on general congestion of the court's calendar or lack of diligent preparation by counsel.<sup>13</sup>

### ORDER

IT IS HEREBY ORDERED the 3-day jury trial previously scheduled to begin on July 5, 2022, is continued to the 6th day of September 2022, at 8:30 a.m. Accordingly, the time from the entry of [General Order 20-009](#), March 16, 2020, and the new trial date is excluded from Defendant's speedy trial computation for good cause.

Signed June 30, 2022.

BY THE COURT



Ted Stewart  
United States District Judge

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<sup>10</sup> 18 U.S.C. § 3161(h)(7)(B)(i).

<sup>11</sup> *Id.* § 3161(h)(7)(B)(iv).

<sup>12</sup> *Id.* § 3161(h)(7)(A).

<sup>13</sup> *Id.* § 3161(h)(7)(C).